gist of criminal libel is the tendency to breach of peace. Mere writing is not publication, *Weir v. Hoss,* 6 Ala., 881; printing a book is not publication, *Jewelers' Agency v. Publishing Co.,* 32 N. Y. S., 41; nor is posting a writing and taking it down before it is read, publication. 1 Stark. Rep., 471. However, it has been held that mailing a letter is publication. *Smith v. State,* 32 Tex., 594; *Mankins v. State,* 41 Tex. Cr. Rep., 662; *Watrous v. Chalker, supra.* The leading case, *Rex v. Burdett,* 3 B. & A., 717, held that mailing was a publication because there was no *locus poenitentiae.* On the other hand, it has been held that there was no publication till the letter was received and read, *McCarlie v. Atkinson, supra; Fonville v. McNease,* 1 Dudd. (S. C.), 303, *semble;* and that there is no publication until there is a communication to a person who understands it. *Prescott v. Tousey, supra.* Chapter 245 of the Penal Code of New York, 1903, based on *Rex v. Burdette, supra,* reads, "to sustain charge of publishing libel * * * it is enough that defendant part with immediate custody". The principal case is in accord with the statute and with the weight of authority at common law, which favors the doctrine that mailing is publication. Academically at least, this seems a doubtful doctrine, as frequently a letter may be withdrawn after mailing; or through accident, negligence, or design may never reach its destination.

MASTER AND SERVANT—UNLAWFUL EMPLOYMENT OF CHILD—MISSTATEMENT AS TO AGE OF CHILD.—DESOTO COAL, MINING & DEVELOPMENT CO. V. HILL, 60 So. (ALA.), 583.—*Held,* that where a mining company employs a boy under fourteen years of age in its mine in violation of Code 1907, Sec. 1035, it is liable for injuries resulting to him from the employment, and incident to any risks of the master's business, though not the proximate result of any act or omission of the boy in the discharge of the duty assigned to him, and though he or his parent may have misstated his age and led the master to believe him to be over the prohibited age; the mining company being in effect an insurer of the boy's age when it employs him.

The doctrine is well established that the violation of a statute forbidding the employment in a factory of a child under a certain age is negligence *per se. Starnes v. Albion Mfg. Co.,* 147 N. C., 556; *Brower v. Locke,* 31 Ind. App., 353; *Cooke v. Lalance Grosjean Mfg. Co.,* 33 Hun. (N. Y.), 351. The majority of the decisions lay down the same rule as in the principal case that misstatement of the age of the child, by the child or his parents, does not affect the liability of his employer. *Beghold v. Auto Body Co.,* 149 Mich., 14; *Norman v. Virginia-Pocahontas Coal Co.,* 69 S. E., 857 (W. Va.); *Glucina v. F. H. Goss Brick Co.,* 115 Pac., 843 (Wash.). The New York Courts, on the other hand, hold that an employer is not guilty of negligence *per se* for injury to a child employed contrary to the statute unless the employer knew that the child was under the probited age, or unless his appearance was such as to put him upon inquiry with respect thereto; *Stenson v. Flick Construction Co.,* 146 App. Div., 66; so that if the plaintiff falsely stated his age and the defendant was justified in believing him, the employment of the child would not be

negligence *per se*. *Koester v. Rochester Candy Works,* 194 N. Y., 92. The ruling of the principal case, affirming the weight of authority is the better rule. The object of the statutes is to prevent the employment of child labor in certain occupations. The only effective way to prevent such employment is to enforce the statute strictly against the master. To follow the New York rule would be, as is said in *Beauchamp v. Sturges & Burn Co.,* 250 Ill., 303, to hold that a child by false statements as to his age, could, in effect, repeal the statute. The desire of a child to obtain employment should not be permitted to overrule a statute passed with the view of bettering the conditions of society. An analogy to this decision is found in the rule that one selling liquor to a minor contrary to a statute, is not excused because the minor misrepresented himself as of age. *State v. Thompson,* 74 Iowa, 119; *State v. Bruder,* 35 Mo. App., 475; *In re Carlson's License,* 127 Pa., 330.

PAYMENT—MISTAKE OF LAW OR FACT—RIGHT TO RECOVER.—POLITIES V. BARLIN, 149 S. W. (KY.), 828.—Plaintiff was employed in defendant's shoe shining parlor from the age of fifteen to twenty-one years and was given "tips" by customers, which he put in the cash register, believing that his employer required him to do so, and that he had no right to the money. The plaintiff now sues for the money and is allowed to recover, regardless of whether the mistake which induced the payment was one of law or fact.

The prevailing rule is that money paid voluntarily with knowledge of facts but under a mistake of law cannot be recovered. *DeBow v. United States,* 29 Ct. Cl., 115; *Powell v. Bunger,* 79 Ind., 468; *Beard v. Beard,* 25 W. V., 486; *County of Jefferson v. Hawkins,* 23 Fla., 223; *Heath & Milligan Mfg. Co. v. Nat'l Linseed Oil Co.,* 99 Ill. App., 90; *Inhabitants of East Sudbury v. Sudbury,* 29 Mass. (12 Pick.), 1; *Strafford Sav. Bank v. Church,* 69 N. H., 582. The rule applies in equity as well as in law, if there is nothing unconscientious in retaining it. *Hemphill v. Moody,* 64 Ala., 468; *Tiffany v. Johnson,* 27 Miss., 227. Where money is paid by mistake of law, though with full knowledge of the facts, it may be recovered, when the payee cannot in good conscience retain it. *Culbreath v. Culbreath,* 7 Ga., 64; *Kane v. Morehouse,* 46 Conn., 300. In Kentucky, money paid through "a clear and palpable mistake of law" essentially affecting the rights of the parties, may be recovered. *City of Louisville v. Henning,* 64 Ky., 381. But a payment of a debt barred by the statute of limitations cannot be recovered on a plea of mistake of law. *Hubbard v. City of Hickman,* 67 Ky., 204. In Missouri, money paid by mistake of law may be recovered when it appears that the sum paid was not equitably due. *Foster v. Kirby,* 31 Mo., 496. No authority was found holding contrary to the general rule that money paid by mistake of fact may be recovered. The rule, however, has been modified to the extent that where the payor has been negligent, money may not be recovered as against persons who have changed their positions in good faith, believing the payment to have been rightly made. *Walker v. Conant,* 65 Mich., 194; *Behring v. Somerville,* 63 N. J. Law, 568. The holding in the principal case is in